

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

February 28, 2013

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Will Berkley; Carla Blanton; Patrick Brewer; Mike Cravens; Karen Mundy; Mike Owens, Chair; Carolyn Plumlee; Lynn Roche-Phillips; and Bill Wilson. Absent was Frank Penn.

Planning staff members present: Derek Paulsen, Commissioner; Chris King, Director; Bill Saltee; Jim Duncan; Barbara Rackers; Jimmy Emmons; Tom Martin; Chris Taylor; Stephanie Cunningham; Janice Westlund; and Rob Johnson. Other staff members present were: Tracy Jones, Department of Law; Captain Charles Bowen, Division of Fire and Emergency Services; Chuck Saylor, Division of Engineering; and Tim Queary, Urban Forester.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 10-0 (Penn absent) to approve the minutes of the January 31, 2013, Planning Commission meeting.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **PATRICIA DONOGHUE ZONING MAP AMENDMENT & ETHINGTON AND ETHINGTON PROPERTY (BOWMAN HOUSE) (AMD.) ZONING DEVELOPMENT PLAN**

- a. MARV 2013-3: PATRICIA DONOGHUE (AMD.) (4/7/13)* - an amended petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Townhouse Residential (R-1T) zone, for 0.95 net (1.28 gross) acres, for property located at 4145 Harrodsburg Road (a portion of). Dimensional variances are also requested with this zone change.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Low Density Residential future land use for the subject property. The petitioner proposes to remove the existing residence and construct three townhouse units, for a density of 3.16 dwelling units per net acre.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reason:

1. The requested Townhouse Residential (R-1T) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
 - a. The Plan recommends Low Density Residential (LD) future land use for the subject property, defined as 0-5 dwelling units per net acre. This would suggest a maximum of 4 dwelling units for the subject property.
 - b. The applicant proposes 3 townhouse dwelling units on the 0.95-acre subject property, at an overall residential density of 3.16 units per net acre.
2. This recommendation is made subject to approval and certification of ZDP 2013-15: Ethington & Ethington Property (Bowman House) (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the property shall be subject to the following use and buffering restrictions via conditional zoning:
 - a. Existing trees shall be preserved for the area within thirty (30) feet of the southern and eastern property lines in the R-1T zone.
 - b. Within these areas, only damaged or diseased trees may be removed, but only with the permission of the Urban Forester. If removed, they shall be replaced in equal number to preserve the existing tree canopy and buffer.

These conditional zoning restrictions are appropriate and necessary for the following reasons:

1. Preservation of the existing tree canopy located adjacent to the Ethington & Ethington property will be ensured.
2. These conditions will minimize the impacts of new development on the remaining agricultural use adjacent to the subject property.

b. REQUESTED VARIANCES

1. Reduce the required rear setback from 25 feet to 10 feet along the northwestern edge of the property.
2. Reduce the required side setback from 25 feet to 15 feet along the southwestern edge of the property for Lot 8.
3. Reduce the required front setback from 30 feet to 10 for Lot 9.

The Zoning Committee Recommended: **Approval of the requested variances**, for the reasons provided by staff.

* - Denotes date by which Commission must either approve or disapprove request.

The Staff Recommended: **Approval**, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. In particular, granting the requested front yard variance for Lot 9 will allow the character to be consistent between the single family home and the surrounding townhouses. Adequate vegetative buffers will remain to mitigate the need for an increased setback along the northwestern and southwestern property lines.
- b. Granting these requests will not allow an unreasonable circumvention of the Zoning Ordinance, but rather a design response to the existing site characteristics, such as the existing tree line along the shared property boundary.
- c. The special circumstances that apply to the subject property that serve to justify the variances are the existing trees and the fact that the one detached unit will be of similar size and layout as the surrounding townhomes, except that it will not share a common wall with another dwelling unit.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would not likely lead to a better design of the property. Approval of the requested variances will actually lessen the impact on the adjoining agricultural property by eliminating the approved driveways which were originally proposed at the rear of the new structures.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance, as both the subject and surrounding properties are currently vacant in this vicinity.

This recommendation of approval is made subject to the following conditions:

- a. Provided the Urban County Council rezones the property R-1T; otherwise, any Commission action of approval of this variance is null and void.
 - b. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
 - c. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
- c. ZDP 2013-15: ETHINGTON & ETHINGTON PROPERTY (BOWMAN HOUSE) (AMD) (4/7/13)* - located at 4145 Harrodsburg Road. **(Wheat & Ladenburger)**

Note: The purpose of this amendment is to rezone the property and add six additional townhouse units.

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the detached dwelling unit proposed in the R-1T zone.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
7. Division of Waste Management's approval of refuse collection.
8. Correct notes #6 and #7.
9. Indicate that this is an amended plan in the title block.
10. Add purpose of amendment note.
11. Denote variances approved by the Commission, as necessary, prior to plan certification.
12. Clarify existing and provided tree canopy information and calculations.
13. Addition of conditional zoning restrictions, as necessary.
14. Discuss proposed driveway widths.
15. Discuss proposed screening along R-1D property line.
16. Discuss sidewalks and possible need for waiver.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner had been having discussions with Mr. Ethington, the owner of the adjoining property, until just prior to the start of this hearing. He said that Mr. Ethington had asked for additional data on storm water; therefore, the petitioner is requesting a one-month postponement of this item, in order to accommodate that request.

Citizen Comments: No one spoke in opposition to the request for postponement.

Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 10-0 (Penn absent) to postpone MAR 2013-3 and ZDP 2013-15 to the March 28, 2013, Planning Commission meeting.

* - Denotes date by which Commission must either approve or disapprove request.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, February 7, 2013, at 8:30 a.m. The meeting was attended by Commission members: Will Berkley, Eunice Beatty, Mike Owens, Carolyn Plumlee and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor, David Jarman and Denice Bullock, as well as Captain Charles Bowen, Division of Fire & Emergency Services and Tracy Jones, Law Department. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, February 7, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

- B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. KIRK & CAROL SNYDER ZONING MAP AMENDMENT & MICHAEL GENTRY PROPERTY ZONING DEVELOPMENT PLAN

- a. MAR 2013-1: KIRK & CAROL SNYDER (2/28/13)* - petition for a zone map amendment from a Professional Office (P-1) zone to a Highway Service Business (B-3) zone, for 0.6138 net (0.9857 gross) acre, for property located at 3270 Richmond Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 9a) recommends Professional Services (PS) future land use for the subject property. The petitioner proposes to rezone the property to a B-3 zone, and to maintain the existing veterinary clinic and associated off-street parking on the site.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval** for the following reasons:

1. The requested Highway Service Business (B-3) zoning for the subject property will allow the property to develop for uses that are compatible in terms of use, intensity, and character with those on the adjoining properties. The veterinary clinic is a principal permitted use in the B-3 zone; thus, the property can continue to operate as a principal permitted use for the foreseeable future.

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2. Recent changes in zoning and to the Richmond Road Traffic and Safety Ordinance, as well as the subsequent development of the area, constitute major changes of a physical and economic nature that have altered the basic character of the area that were not anticipated by the 2007 Comprehensive Plan. These have increased the permitted intensity of land use in this area over that recommended by the Plan.
3. This recommendation is made subject to approval and certification of ZDP 2013-9: Michael Gentry Property prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted with the following prohibited uses:

PROHIBITED USES:

- a. Adult entertainment establishments, adult bookstores, and adult video stores.
- b. Drive-through windows accessory to restaurants.
- c. Cocktail lounges not associated with restaurants.
- d. Nightclubs.
- e. Billboards.
- f. Cellular telephone towers.
- g. Amusement parks and fairgrounds.
- h. Outdoor loud speakers or music.
- i. Hotels and motels.

These use restrictions are necessary and appropriate for the subject property to lessen the intensity of the uses due to the size of the property and to its lack of direct access onto Richmond Road.

- b. ZDP 2013-9: MICHAEL GENTRY PROPERTY (2/28/13)* - located at 3270 Richmond Road.
(Foster-Roland)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote requested zone in site statistics.
7. Denote adjoining final record plat information.
8. Denote: This property shall be developed in accordance with the Richmond Road Access and Landscape Ordinance.
9. Remove extraneous soils information from plan.
10. Correct date in Commission's certification.
11. Denote name and address of developer and/or owners.
12. Denote topographical information and source.
13. Denote construction access location.
14. Denote height of building in feet.

Zoning Presentation: Mr. Sallee presented the staff's zoning report, briefly orienting the Commission to the location of the subject property just south of the intersection of Man O' War Boulevard and Richmond Road. Referring to a rendered zoning map, he noted that the subject property is surrounded on three sides by existing B-3 zoning, although B-1 and P-1 property was located across Richmond Road. The petitioner is requesting rezoning of the subject property to the B-3 zone in order to bring the property into conformance with the surrounding parcels.

Mr. Sallee displayed the 2007 Comprehensive Plan land use map on the overhead projector, explaining that the Plan's recommendation does not reflect the existing zoning at this location. The B-1 and P-1 properties across Richmond Road are recommended for Retail Trade and Professional Service uses, which do reflect the uses there. However, properties along the southwest side of Richmond Road are recommended for Professional Services use, as is the subject property. Located behind them, a Medium Density Residential land use recommendation is made by the Plan. Mr. Sallee stated that there have been substantial changes in the area since the adoption of the Comprehensive Plan in 2007, as well as recent changes to the adopted Richmond Road Traffic, Safety and Landscape Ordinance. Conditional zoning restrictions have also been modified since 2007 in the area.

Mr. Sallee said that the proposed rezoning to B-3 is not in agreement with the recommendation of the Comprehensive Plan. However, the staff believes that the proposed B-3 zone, with conditional zoning restrictions, would be appropriate at this location in order to allow the property to develop in substantial conformance with the adjoining properties. The staff and Zoning Committee have recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

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Mr. Sallee stated that the staff is also recommending conditional zoning restrictions for the subject property, as listed on the agenda and in the staff report. Those restrictions include a number of prohibited uses, which the staff believes are appropriate and necessary in order to lessen the intensity of the possible uses on the subject property, which does not have direct access to Richmond Road.

Mr. Martin presented the corollary preliminary development plan, noting that it depicts the existing conditions on the property. He stated that the subject property currently contains a veterinary clinic, which is just over 3,000 square feet in size, with 17 associated parking spaces, and access to the Richmond Road service road. Mr. Martin noted that the staff would anticipate that any redevelopment of the subject property would require the Planning Commission's review and approval of a final development plan.

With regard to the conditions for approval, Mr. Martin stated that they included the standard sign-offs, as well as some "clean-up" conditions and removal of extraneous information. He said that the staff has already reviewed a digital version of a revised plan, which addressed some of those conditions, and added that the staff and the Subdivision Committee recommended approval of this plan.

Petitioner Presentation: Jon Woodall, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, and thanked the staff for their time and assistance in reviewing the plan.

Citizen Comments: There were no citizens present who wished to comment on this request.

Zoning Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 10-0 (Penn absent) to approve MAR 2013-1, for the reasons provided by staff, including the conditional zoning restrictions as recommended by staff.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Mr. Brewer, and carried 10-0 (Penn absent) to approve ZDP 2013-9, with the 14 conditions as listed on the agenda.

2. STEVE & CATHY SNOWDEN ZONING MAP AMENDMENT & HENRY CLAY SUBDIVISION #2 ZONING DEVELOPMENT PLAN

- a. MAR 2013-4: STEVE & CATHY SNOWDEN (4/7/13)* - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Neighborhood Business (B-1) zone, for 0.309 net (0.403 gross) acre, for property located at 708-712 Henry Clay Boulevard.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 2) recommends Retail Trade and Personal Services (RT) and Medium Density Residential (MD) future land use for the subject property. The petitioner has requested a Neighborhood Business (B-1) zone in order to expand a neighborhood shopping center and to provide additional off-street parking.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

1. The requested Neighborhood Business (B-1) zone is in agreement with the land use recommendation of the 2007 Comprehensive Plan for a portion of 712 Henry Clay Boulevard, since it is recommended for Retail Trade and Personal Services land use. This portion of the zone change will bring the existing parcel into one zoning category for consistency.
2. The 2007 and 2012 Goals and Objectives of the Comprehensive Plan are supportive of sustainable small neighborhood centers, which can provide for a better quality of life within the immediate area and reduce travel demands (Themes A.2.a. and A.3.b.).
3. The requested Neighborhood Business (B-1) zone, with conditional zoning restrictions, is more appropriate than the existing zoning for 708 Henry Clay Boulevard for the following reasons:
 - a. The adjoining neighborhood shopping center and the single-family residence share a gravel driveway. Additionally, there is no landscape buffer or other separation between the business and residential uses. Deliveries to the shopping center utilize the access point and driveway, as do solid waste service vehicles.
 - b. The requested B-1 zoning will allow for a landscape buffer to be installed along the southwest property line, and will permit an adequate service and delivery area to be installed to the rear of the existing shopping center rather than deliveries being made from the public right-of-way.
 - c. The requested B-1 zone will permit a small addition to the shopping center and the addition of off-street parking to accommodate the current and proposed use of the shopping center.

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- d. Shifting the R-1C zone line to the south approximately 50 feet will provide adequate space to allow buffering and maneuvering on the site for improved circulation; this will improve the quality of life for the residential properties that will remain in the area along Henry Clay Boulevard, Liberty Road and Clayton Avenue.
4. This recommendation is made subject to approval and certification of ZDP 2013-16: Henry Clay Subdivision #2, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
5. Under the provisions of Article 6-7 of the Zoning Ordinance, only the following use restrictions are recommended via conditional zoning for the subject property:

Prohibited Uses

- a. Automobile service stations.
- b. Tattoo parlors.
- c. Miniature golf courses.
- d. Carnivals and circuses, even on a temporary basis.
- e. Community centers.
- f. Drive-through facilities.
- g. Outdoor live entertainment.

Landscaping and Lighting Restrictions

- a. A landscape buffer shall be installed along the southwest and southeast property lines, which shall adhere to the Article 18 zone perimeter screening requirements, with the addition of 3-foot shrubs located between any required trees.
- b. No pole lighting may be installed on the subject property; however, ground-level lighting, lighting for pedestrian paths and sidewalks and indirect lighting shall be permitted.

Signage Restrictions

- a. No free-standing signs shall be erected within 25' of a residential zone.
- b. No directional signs shall be installed within 20' of a residential zone.

These restrictions are appropriate and necessary in order to ensure that the subject property can be appropriately buffered and to limit the intensity of the land use nearest to residential uses at the edge of an existing residential subdivision.

- b. ZDP 2013-16: HENRY CLAY SUBDIVISION #2 (4/7/13)* - located at 708-712 Henry Clay Boulevard.
(Barrett Partners)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
7. Division of Waste Management's approval of refuse collection.
8. Clarify height of building in feet.
9. Denote existing tree canopy to remain as a TPA.
10. Resolve parking arrangement backing onto Henry Clay Boulevard right-of-way.
11. Discuss plan status.
12. Addition of conditional zoning restrictions, as necessary.
13. Resolve water quality improvements proposed for new parking lot.

Zoning Presentation: Mr. Sallee presented the staff report, briefly orienting the Commission to the location of the subject property, which is near the signalized intersection of Liberty Road and Henry Clay Boulevard. He noted that that is the only traffic signal on Liberty Road between New Circle Road and Winchester Road. Henry Clay Boulevard extends approximately three blocks past the subject property to the north, ending in a "T" intersection at Strader Drive; it continues to the south and west of the property nearly all the way to Richmond Road.

Mr. Sallee stated that the 712 Henry Clay Boulevard parcel is split-zoned; most of the property is zoned B-1, with the exception of the eastern portion, which is zoned R-1C. The building on that property extends across the zoning line, and an existing conditional use permit allows the extension of the B-1 zoning regulations up to 50 feet into that portion of the property. The property at 708 Henry Clay Boulevard is also zoned R-1C, and it is occupied by a single-family dwelling. Mr. Sallee explained that the petitioner is proposing to rezone the subject properties in order to expand the existing small commercial shopping center on the site.

Displaying several aerial photographs of the subject property and surrounding area, Mr. Sallee noted the location of: the existing dwelling and commercial buildings on the property; the driveway that is shared by the two uses; the existing off-

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street parking areas for the commercial center, which does not meet the current standards for off-street parking; and the existing angled parking, which has access to both Henry Clay Boulevard and Liberty Road.

Mr. Sallee stated that the 2007 Comprehensive Plan recommends Retail Trade & Personal Service land use for all of the property at 712 Henry Clay Boulevard. The surrounding properties along Liberty Road are recommended for Medium Density Residential land use, which is defined as 5–10 dwelling units per net acre. The staff finds, therefore, that the proposed rezoning for the portion of the property that is recommended for Retail Trade & Personal Service land use is in agreement with the Comprehensive Plan recommendation, but the proposed zone change for the existing dwelling is not in agreement.

Mr. Sallee said that having a gravel access drive shared by a commercial and a residential use is an unusual circumstance. He added that a small addition is proposed to the commercial center on the same side as the residential use, which would allow for additional parking for the commercial center. That addition would also allow for the installation of proper landscape screening between the commercial uses and its parking and the existing residential structures. The staff believes that allowing this rezoning will strengthen the neighborhood shopping center by providing for a small increase in its size, and will stabilize its long-term viability by allowing for proper screening and a more finished appearance.

Mr. Sallee displayed another aerial photograph of the property, explaining that it depicts very clearly the conflict between the residential and commercial portions of the subject property, since it happened to indicate a garbage truck parked on-street blocking the driveway to the residential structure (temporarily).

Mr. Sallee stated that the staff also reviewed the adopted Goals & Objectives of the 2012 Comprehensive Plan, specifically Theme A.2.a, which calls for opportunities for infill and redevelopment to respect context and design wherever possible; and Theme A.3.b., which provides for well-designed neighborhoods and communities. The staff believes that both of these Themes speak to the positive aspects of the proposed zone change to B-1.

Mr. Sallee said that the staff is cognizant of the residents who live near this existing commercial center, and the fact that the proposed rezoning might result in an increase in the activity there. Therefore, the staff is recommending conditional zoning restrictions, as listed in the staff report and on the agenda, in order to help protect those residents. The proposed conditional zoning includes several use restrictions; additional landscaping along the new zoning boundary between B-1 and R-1C; and that no pole lighting be allowed on the properties that are currently zoned R-1C. Mr. Sallee stated that the staff and the Zoning Committee are recommending approval of this request, for the reasons listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Taylor presented the zoning development plan, noting that, as it is a final plan, this would possibly be the last opportunity for the Planning Commission to review it. He said that the petitioner is proposing a 2,700 square-foot addition to the portion of the property along Henry Clay Boulevard, which would result in a total of approximately 17,000 square feet for the entire center. The biggest change proposed by this plan would alter the access alignment by closing approximately half of the existing apron along Henry Clay Boulevard. Mr. Taylor stated that the Subdivision Committee recommended approval of this plan, subject to the 13 conditions as listed on the agenda.

Mr. Taylor said that, at the Subdivision Committee meeting, there was some discussion about traffic backing out of two of the parking spaces onto the Henry Clay Boulevard right-of-way. Since that meeting, the petitioner has submitted a revised plan that removed some of the offending spaces and, following discussions with the Division of Traffic Engineering, marked the remaining two spaces in that area for compact car parking only. The Division of Traffic Engineering was satisfied with that arrangement, and condition #10 could now be deleted. With regard to condition #11, Mr. Taylor stated that that condition is typically included on final development plans submitted with zone changes. Given the required two-week turnaround necessary for certification of such a plan, the staff likes to ensure that the petitioner is fully aware of the sign-offs needed and the timing involved in getting a plan certified within that time frame. Should the petitioner choose for this to remain a final development plan, the staff would be agreeable to the deletion of condition #11.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioners. He said that one neighbor of the subject property was present at this hearing in support of the proposed zone change, and he distributed to the Commission members copies of a letter of support from the owner of a directly adjoining property.

Mr. Murphy stated that the petitioners purchased the shopping center on the subject property two years ago, when it was unkempt and nearly vacant. He displayed several photographs of the subject property and surrounding area, noting the significant improvements that have been made to the property, including: the removal of the existing flat roof and installation of a hipped roof for the shopping center building; completely new fronts for the buildings; and the addition of a cupola. The main tenant on the property today is a popular restaurant facing Henry Clay Boulevard. A chiropractic office and an upscale retail/consignment store also face Henry Clay Boulevard. A cupcake bakery is located in the portion of the center that faces Liberty Road. Referring to a photograph of the Eastminster Presbyterian Church, located across the Henry Clay Boulevard/Liberty Road intersection, Mr. Murphy said that, although existing signage in the shopping center

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parking lot directs overflow parking to the church, few drivers choose to park there, possibly due to the unusual configuration of the intersection and the difficulty in crossing it. He explained, referring to a photograph of the driveway that is shared between the commercial and residential uses on the property, that the driveway is divided between the commercial and residential zones. All of the truck traffic to the property, including delivery vehicles and solid waste trucks, are forced to use that shared driveway to access the rear of the property. Mr. Murphy also identified the parking spaces that are proposed to be removed in order to prevent drivers from backing out onto Henry Clay Boulevard, and he added that the petitioners hope that the addition of more parking spaces on the subject property will help to alleviate problems with on-street parking.

Mr. Murphy stated that adequate off-street parking is one of the main issues facing the existing commercial center. He said that there are currently 34 off-street spaces; the development plan depicts 50 off-street spaces, which should bring the currently nonconforming property into compliance with regard to parking, and provide an overage of eight spaces. The major complaint voiced to the petitioners by neighbors of the property is that the recent success of the center has resulted in additional on-street parking, which causes difficulties for residents and drivers in the area.

Mr. Murphy said that the other existing issue of concern on the subject property is the driveway that is shared between the commercial and residential portions of the property. He explained that the petitioners have purchased the residential property, and there is currently no screening or buffering on it. The development plan is proposing an appropriate buffer between the subject property and adjoining parcels, and the new parking spaces are proposed to face toward the commercial area to prevent vehicle headlights from facing the residential area. The petitioner is also proposing to fence the existing yard area behind the commercial buildings and ensure that it will be properly maintained.

Mr. Murphy stated, with regard to the staff's recommendation, that the Liberty Road portion of the proposed rezoning is in agreement with the recommendations of the 2007 Comprehensive Plan, and the petitioner contends that the rezoning of the residential portion is in agreement with the Goals & Objectives of the 2012 Comprehensive Plan, particularly with regard to maintaining the viability of neighborhoods.

Mr. Murphy said that the petitioners believe that "neighborhood shopping centers do not exist on their own." He stated that being located in a nice neighborhood does not ensure that a shopping center will be commercially viable, as evidenced by the decline of this commercial center prior to its purchase by the petitioners two years ago. The petitioners contend that granting this requested zone change could maintain the viability of the commercial center, while providing the opportunity to expand slightly and improve the required parking. Mr. Murphy stated that the petitioners are in agreement with the staff's recommendations, including the proposed conditional zoning restrictions, and he requested approval.

Citizen Support: John Considine, 1136 Liberty Road, stated that the subject property was previously blighted, and the petitioners have made major improvements to it. He said that he fully supports the proposed zone change.

Citizen Opposition: Caren Caton, 313 Henry Clay Boulevard, stated that she is not in favor of rezoning the existing residential property for business use.

Ms. Caton asked that the Planning Commission consider the history of the commercial portion of the property; it has housed a variety of businesses, in the same footprint, since 1952. She believed that, since the property has been viable for business use in its existing configuration for many years, it does not need to be expanded in order to continue to be viable.

Ms. Caton said she was also concerned that a rezoning for business use could be precedent-setting, particularly since no property on Henry Clay Boulevard has ever been rezoned to a business zone. Following the closing of the Julia R. Ewan school, the neighborhood struggled to find a use for that building that would be compatible with the surrounding residences. She opined that, should the subject property be rezoned to B-1, there are several other nearby properties that could be "likely targets for business zone expansion," and the proposed landscape buffering would not be adequate to protect the residences from those uses.

With regard to concerns about traffic, Ms. Caton said that the Henry Clay Boulevard area is already burdened with heavy traffic, to the extent that the Division of Traffic Engineering is currently performing a traffic study at the request of neighborhood residents. She stated that she believed that, rather than being a problem in itself, on-street parking is a symptom of an overburdened street system.

Ms. Caton said that, although the improvement of the subject property had a positive effect on the surrounding neighborhood, commercial properties tend to go through cycles along with the economy. She is concerned that, once the subject property is zoned B-1, any of the allowable uses would be permitted there, no matter what effect they might have on the residences. In addition, the enlargement of an existing commercial center could create interest for additional business to locate there, necessitating further expansion.

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Ms. Caton stated that there are several nearby commercial centers that currently have vacancies, including Strader Plaza, and she believes that the community would be better served by maintaining residential properties, and locating business uses in vacant areas that are already zoned to accommodate them.

Petitioner Comments: Steve Snowden, petitioner, stated that he understands Ms. Caton's concerns. He said that, for the six years prior to his purchase of the property, the center had only one tenant. He believes that the property is fully occupied today due to the efforts made to improve and renovate the structures.

Mr. Snowden stated that the biggest problem on the subject property is lack of off-street parking, which is essential for a successful restaurant. He said that the parking configuration is also outdated, with cars backing out onto Henry Clay Boulevard. The primary reason for the proposed rezoning is to allow the petitioners to convert the residential property, with which the commercial center shares a driveway, to appropriate parking, access, and landscaping. The proposed addition to the commercial center would be a retail use, rather than a restaurant, so it should not generate much need for additional parking.

Mr. Snowden said that, since his purchase and renovation of the subject property, there are now approximately 30 people employed in the businesses there. He opined that the commercial uses that formerly occupied the property went out of business not due to the location or lack of parking, but because of the deplorable condition of the property. Mr. Snowden stated that he and his wife believe that the work they put into the renovation of the subject property has improved the neighborhood, and increased property values for everyone in the vicinity.

Petitioner Rebuttal: Mr. Murphy stated, with regard to Ms. Caton's concerns about the proposed rezoning setting a precedent in the area, that the Planning Commission would be required to approve any additional zone change requests in the vicinity.

With regard to the concerns about traffic impact, Mr. Murphy said that the petitioner is proposing to locate a small retail business in the new portion of the commercial center, so it should not generate a great deal of additional traffic. He noted that the proposed conditional zoning restrictions would not permit any "heavy traffic generators" to locate on the property.

Mr. Murphy said that many of the neighbors nearest the subject property have been supportive of the commercial center and the proposed rezoning. He noted that Ms. Caton has valid concerns, but she lives in the 300 block of Henry Clay Boulevard, not immediately adjacent to the subject property.

Staff Rebuttal: Mr. Sallee stated that the staff had not received any communications from nearby residents about this request prior to this hearing.

Zoning Action: A motion was made by Mr. Brewer, seconded by Ms. Mundy, and carried 10-0 (Penn absent) to approve MAR 2013-4, for the reasons provided by staff, including the conditional zoning restrictions as recommended by staff.

Development Plan Action: A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 10-0 (Penn absent) to approve ZDP 2013-16, subject to the conditions as listed on the agenda, deleting #10 and #11.

Note: Mr. Brewer left the meeting at this time.

VI. COMMISSION ITEMS

- A. INITIATION OF TEXT AMENDMENTS RELATED TO THE SANITARY SEWER CAPACITY ASSURANCE PROGRAM** – The staff will request Planning Commission initiation of text amendments to Articles 5-2 and 21-4 of the Zoning Ordinance, and Sections 4-5 and 6-2 of the Land Subdivision Regulations. These amendments are related to the new LFUCG Capacity Assurance Program (CAP) that will be fully implemented in July of this year. If initiated, the Commission's requisite public hearing on these amendments would be scheduled for the spring.

Staff Presentation: Mr. Sallee stated that the staff was asking the Commission to consider the initiation of text amendments to the Zoning Ordinance and Land Subdivision Regulations in order to further implement the Capacity Assurance Program that is expected to go into effect in 2013. He noted that he had distributed to the Commission members a revised draft text of two sections of the Zoning Ordinance and two sections of the Land Subdivision Regulations, the initial draft of which the staff presented at the most recent work session. The only change proposed to that draft is to Article 21-4(b) of the Zoning Ordinance, adding the words, "or has been reserved." Mr. Sallee explained that that change was prompted by a question from Mr. Cravens at the work session about the possible delays between plan filings and how they relate to the capacity requirements for a final development plan. When the Commission approves a development plan, the petitioner has up to one year to meet all of the conditions attached, and certify the plan. In discussion with the Law Department, the Division of Water Quality, and the consultant hired to fully implement the Capacity Assurance Program, the staff has determined that the proposed language will enable an applicant to reserve capacity under the program as it is designed, and have the assurance that they can then proceed on their project accordingly.

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Mr. Sallee said that, should the Commission choose to initiate this text amendment today, the public hearing would likely be scheduled in a couple of months.

Commission Questions: Ms. Blanton asked if there were any instances in which a petitioner might need to be exempt from the regulations, but could still bring a plan before the Commission for approval, which should be noted in the proposed language. Mr. Sallee answered that there is a component of the Capacity Assurance Program that will allow essential public facilities to proceed with their development, whether or not full capacity exists. It is anticipated that, even with this language, those public facilities should be able to provide the necessary documentation that their facility is "essential" and capacity should be granted to them.

Ms. Roche-Phillips asked if any changes had been made to address the possible need for a waiver to the Land Subdivision Regulations. Mr. Sallee responded that the general consensus of the group who reviewed the Commission members' concerns was that it is possible that an applicant could request a waiver of the CAP regulations. He noted that it is difficult to anticipate at this time how, and in what form, such a waiver request might be made. Ms. Roche-Phillips asked if the CAP has any type of guidance for the Planning Commission with regard to how to address such a waiver or exemption request. Mr. Sallee answered that the program itself will provide some guidance, and there will be other Code of Ordinance changes made as well. The key feature of the program, in the staff's opinion, is the ability for LFUCG to impose fines if the program is not followed. The staff expects, therefore, that the number of those requests will be low.

Ms. Mundy asked if the proposed text amendment had been reviewed by the Zoning Committee. Mr. Sallee answered that it had not yet been reviewed by the Zoning Committee, adding that that meeting, should the Commission choose to initiate the text amendment, would be the next step in the ZOTA process. Prior to that meeting, the staff would notify all of the registered neighborhood associations of the proposed text amendment.

Ms. Beatty asked if the proposed text amendment would then come back before the Planning Commission. Mr. Sallee responded that the Zoning Committee would likely make a recommendation to the full Commission, and the text amendment would be placed on the Commission's agenda for a public hearing.

Mr. Cravens asked if the Expansion Area #2 would be exempted from the CAP requirements. Mr. Sallee answered that the staff expects that exemption to be automatic. Under the language in Article 21-4(b), such a plan could then be approved, having been "grandfathered in" under the program. There would still need to be some level of evaluation as to whether that new plan submission would be compliant with the originally grandfathered plan. The staff who performed the evaluation would then decide whether or not they could issue the required documentation of CAP compliance. Mr. Cravens asked if it should be spelled out in the Ordinance that the Expansion Areas are exempt from the CAP requirements. Mr. Sallee responded that the Expansion Areas are exempted in the current CAP, so the same "documentation" should apply, regardless. Mr. Cravens asked if the proposed text amendment had been reviewed by the CAP committee. Mr. Sallee answered that the draft had not been reviewed by the entire CAP Committee, since it was drafted following the conclusion of their meetings last December. The internal work group, however, including the consultants; Division of Water Quality; Department of Law; and Planning, have reviewed the entirety of the draft. Mr. Cravens stated that the proposed text amendment "went on a pretty fast track," and he was concerned that the Zoning Committee had not yet reviewed the draft text.

Ms. Plumlee asked what measures were in place for oversight of the CAP, in case of infractions. Mr. Sallee responded that many staff members will likely be involved in implementing the program, and that it will require a substantial change in how those types of plans are reviewed.

Director Comments: Mr. King stated that a new position will be created in the Division of Water Quality to oversee the CAP and the other elements of the Consent Decree and the associated Agreed Judgment.

Mr. Owens stated that, at this time, this text amendment is only being proposed to be initiated; there will still be opportunities to revise the language as necessary during the normal review process. He said that he would be willing to go forward with initiation at this time.

Motion: A motion was made by Mr. Cravens to postpone this request, in order for: 1) language to be added to address the exemption of the Expansion Areas; 2) the draft text to be reviewed by Charlie Martin; and 3) the draft text to be reviewed by the Zoning Committee. Mr. Cravens' motion was seconded by Ms. Mundy.

Director Comments: Mr. King stated, for clarification, that Charlie Martin, the Law Department, and the consultants, as well as Division of Planning staff, have spent extensive time working on this initial draft.

Discussion of Motion: Ms. Blanton asked if the Zoning Committee typically reviews draft text amendments prior to their initiation by the Planning Commission. Mr. Sallee answered that after initiation, a draft text amendment is always reviewed by the Zoning Committee prior to consideration by the full Commission. He added that draft text amendments are typically presented first to the Commission at a work session prior to initiation, knowing that the Zoning Committee will review it later in the process.

Ms. Beatty asked if the Planning Commission would have the opportunity to vote on the proposed text amendment after it is reviewed by the Zoning Committee. Mr. Sallee answered affirmatively, explaining that the Zoning Committee makes a recommendation on all map amendments and text amendments prior to the Commission's scheduled public hearing.

Mr. Berkley stated that he heard a presentation by Charlie Martin about the Capacity Assurance Program, during which he heavily emphasized the Expansion Areas. He asked why the Expansion Areas are not specifically addressed in the draft text. Mr. Sallee responded that the applicable term in the text is "including documentation" in Article 21-4. He said that the "documentation" will be the result of the new CAP review process. Mr. Berkley asked what would need to be reviewed, if properties in the Expansion Area will be exempt from the CAP.

Director Comments: Mr. King stated that all of the Expansion Areas will be considered exempt. He explained that the proposed amendments to the Zoning Ordinance and Subdivision Regulations are just one small part of all of the documentation, Ordinances, and policies that will be enacted relating to the CAP; not everything needs to be spelled out in the Zoning Ordinance text. Mr. King said that the CAP task force was comfortable that all of those issues will be addressed appropriately in other manuals and Ordinances, and they don't need to be enumerated in the Zoning Ordinance. Mr. Sallee added that, just because an item is not mentioned specifically in this section of the Zoning Ordinance, it does not mean that it will not be applicable under the CAP.

Ms. Plumlee asked if the proposed text amendments will need to be in place by July 1st, to coincide with the beginning of the CAP. Mr. King answered that they do not have to be, but the task force agreed upon that date, because all of the elements need to be in place within a certain timeframe following the EPA's acceptance of the information submitted by LFUCG on January 3, 2013. He said that time is of the essence in this case, noting that the Commission will have the opportunity, as part of the public hearing process, to make modifications to the proposed text before their recommendation is sent for final action by the Urban County Council.

Ms. Beatty asked if there would be other documentation, accessory to the proposed text amendments, noting how exemptions, which situations will be grandfathered, and non-compliance with the regulations will be handled. Mr. Sallee answered that it would be more appropriate to think of these proposed text amendments as the accessory documents to the other new Capacity Assurance regulations. He added that the Council has already adopted the program; and that there will be other additions to the Code of Ordinances to implement the processes Mr. King outlined. These proposed text amendments were intended to clarify the Zoning Ordinance, primarily for design professionals working outside of Lexington-Fayette County who might be reviewing the regulations online, to signal to them that they will be required to obtain a new type of permit as part of any development project.

Mr. Cravens stated that he did not understand why the text could not specifically exempt the Expansion Area, since it comprises the bulk of undeveloped land in the county. He said that he believes that the proposed text amendment needs more work.

Ms. Blanton stated that she would be comfortable moving forward with the initiation of the proposed text amendment, adding that she thinks it would be helpful to add more detail to simplify the text for those who might not be familiar with the regulations.

Director Comments: Mr. King said that Charlie Martin and members of the consulting team would be available at the subcommittee meetings and at the public hearing to explain the full array of regulations required for the CAP, so that the Commission can see the proposed text amendments in the context of the overall Capacity Assurance Program.

Action: Mr. Cravens' motion failed, 6-3 (Brewer and Penn absent; Beatty, Blanton, Owens, Plumlee, Roche-Phillips, and Wilson opposed).

Motion: A motion was made by Ms. Roche-Phillips, seconded by Mr. Wilson, and carried 6-3 (Penn absent; Berkley, Cravens, and Mundy opposed) to initiate the proposed text amendments to the Zoning Ordinance and Land Subdivision Regulations, as requested by the staff.

B. PLANNING COMMISSION WORK SESSION – Chairman Owens announced the beginning of the work session at 3:00 p.m.

VII. STAFF ITEMS

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR MARCH, 2013

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 7, 2013
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	March 7, 2013

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Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 14, 2013
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 21, 2013
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 27, 2013
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 28, 2013

X. **ADJOURNMENT** – There being no further business, Chairman Owens declared the meeting adjourned at 2:55 p.m.

TLW/TM/CT/BJR/BS/src

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